IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9664 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ALTAF GAFFURBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner No. 1

MR DP JOSHI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order passed by the Commissioner of Police, Surat City, Surat on 06.08.2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The petitioner is branded as a 'dangerous

person'. The detaining authority took into consideration three registered offences and statements of two anonymous witnesses and came to conclusion that the activities of the petitioner - detenu is detrimental to public order and that he is required to be immediately prevented from pursuing his illegal activities. The authority also considered that resorting to less drastic remedies under ordinary law is not possible to be resorted to and came to conclusion that detention under PASA Act is the only remedy and, therefore, the order of detention was passed.

3. The petitioner, by this petition under Article 226 of the Constitution of India challenges the order of detention on various grounds stated in the petition.

4. Mr.Varma, learned advocate appearing on behalf of the petitioner has restricted his arguments to the fact that there is delay in passing the detention order. The live link between the activities of the detenu and the order of detention was snapped before the order was passed, and that the satisfaction recorded by the authority for immediate need for detaining the petitioner cannot be considered as genuine in law and, therefore, the petition may be allowed and the petitioner may be released from detention.

4. The petition is opposed to by learned A.G.P. Mr.D.P.Joshi.

5. Having regard to the contentions raised before this Court, it is amply clear that the order of detention was passed on 06.08.2001. The latest offence was registered against the petitioner on December 07, 2000, almost 9 months prior to the passing of the order. Thereafter, there is no offence registered against the petitioner - detenu. So far as the activities mentioned in the statements are concerned, it may be stated that the statements were recorded on 11.06.2001 by the sponsoring authority and were verified by the detaining authority on 23.07.2001 and after a lapse of about 13 days, the order of detention came to be passed on 06.08.2001. This indicates that the satisfaction recorded by the authority for the immediate need for detaining the detenu for preventing him from pursuing his activities was not genuine in law. If such satisfaction was genuine, the authority would have passed the order at the earliest, immediately after verification of the statements.

6. The above discussion indicates that the satisfaction recorded by the authority for immediate need

for detaining the detenu in exercise of powers under Section 3(1) of the PASA Act cannot be considered as genuine. This would vitiate the order of detention. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated 06.08.2001 passed against the petitioner - detenu is hereby quashed and set aside. The detenu-Altaf Gaffurbhai Patel be released from detention forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(A.L. Dave, J)

'Bhavesh'